NO. 48649-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PROCEEDING FOR KITSAP COUNTY FOR THE FORECLOSURE OF LIENS FOR DELINQUENT REAL PROPERTY TAXES, INTEREST AND FEES FOR THE YEAR 2011 AND SOME PRIOR YEARS

JOHN SCANNELL AND PAUL KING,

Appellants,

v.

KITSAP COUNTY,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY
Superior Court No. 14-2-00875-1

BRIEF OF RESPONDENT KITSAP COUNTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITY

I. INTRODUCTION

This appeal seeks reversal of an order of the Kitsap County Superior denying the appellants' motion under Superior Court Civil Rule 60 to set aside a tax deed issued following the sale of a tax parcel at foreclosure.

The appellants, John Scannell and Paul King, do not deny that the tax parcel was lawfully subject to foreclosure for delinquent property taxes. Further, they do not deny that they were properly served with the summons and complaint in the foreclosure action. Additionally, they did not directly appeal the court orders authorizing the sale of the tax parcel.

Instead, Messrs. Scannell and King waited almost a full year after the orders authorizing the sale of the tax parcel were entered to file a CR 60 motion. Lacking a sound basis for setting aside the tax sale, their CR 60 motion asserted a grab bag of arguments – ranging from non-existent misrepresentations to various alleged procedural deficiencies – that the Superior Court, after entertaining extended briefing and oral argument on the issues – thoughtfully and rightly rejected.

Dissatisfied with their loss on the merits, Messrs. Scannell and King then proceeded to file a second CR 60 motion and then a third CR 60 motion, both of which rehashed their earlier arguments, and both of which the Superior Court rightly declined to entertain.

This appeal is without merit. Therefore, respondent-plaintiff Kitsap County respectfully requests that the Court of Appeals affirm the Superior Court's denial of the appellants' CR 60 motion.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion, even though a proceeding for the recovery of property sold for taxes is specially governed by RCW 84.68.080 through 84.68.100, not by CR 60, and Messrs. Scannell and King never complied with any of those mandatory statutory provisions?

2. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion, even though, assuming for the sake of argument that CR 60 was a proper legal mechanism for the relief they were seeking, they did not make the motion within a reasonable time, as required by the court rule?

3. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion, even though, assuming for the sake of argument that CR 60 was a proper legal mechanism for the relief they were seeking, they failed to set forth facts constituting a defense to the action, as required by the court rule?

4. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion on the basis of

misrepresentation, even though, assuming for the sake of argument that CR 60 was a proper legal mechanism for the relief they were seeking, they failed to present credible, admissible evidence that any misrepresentation ever occurred?

5. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion on the grounds that legally required postings of sale were never made, when, in fact, they offered no credible, admissible evidence of that allegation?

6. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion on the basis that KKKKK Corporation and Mr. King were not notified that the building might be auctioned, even though all legal requirements applicable to property tax foreclosure, including notices, were, in fact, complied with by the County?

7. Did the Superior Court err in denying Messrs. Scannell and King's Superior Court Civil Rule 60 motion on the basis that the County lacked legal authority to sell the subject parcel via Internet auction, when, in fact, such authority did exist at the time of the sale?

8. Did the Superior Court err in ruling that Mr. Scannell lacked standing to bring a CR 60 motion, when his sole purported interest in the property consisted of an expired lease with an option to purchase and he himself admitted that he had no ownership interest in the property at the

time of judgment and sale or at the time of the bringing of the CR 60 motion?

III. IDENTIFICATION OF PARTIES TO APPEAL

A. Introduction

Because Messrs. Scannell and King in their Opening Brief identify and discuss various persons in a confused and inconsistent fashion, the County, before setting forth its Statement of the Case, believes it is useful to properly identify the persons relevant to this appeal.

B. Identification of Respondent Kitsap County

The respondent in this appeal is Kitsap County, a political subdivision of the State of Washington. The County forecloses on real property tax liens when the taxes secured by those liens have become at least three years' delinquent. RCW 84.64.050. Comprehensive statutory procedures for real property tax foreclosure are set forth in chapter 84.64 RCW.[1] Comprehensive statutory procedures for recovery of property sold for taxes are set forth in chapter 84.68 RCW.[2]

C. Identification of Appellants

This appeal was filed in the names of two natural persons: John Scannell and Paul King. At the time of the foreclosure of the parcel at

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[1] A true and correct copy of chapter 84.64 RCW is set forth in the Appendix to this brief.

[2] A true and correct copy of chapter 84.68 RCW is set forth in the Appendix to this brief.

issue in this appeal, Mr. King was the record owner of the parcel. CP at 61. At the time of the foreclosure of the tax parcel, Mr. Scannell's sole purported interest in the parcel was based on a document entitled "Lease," which was dated December 28, 1999, was recorded with the Kitsap County Auditor on June 16, 2003, and which, by its own terms, expired on December 31, 2009. CP at 62-64.

D. KKKKK Corporation

KKKKK Corporation is not a party to this appeal. KKKKK Corporation was a Nevada corporation. CP at 47 (identification in warranty deed), 219 (exhibit to service declaration; tax parcel no. 3718-016-035-0002). The mailing address for KKKKK Corporation was exactly the same as Mr. King's: P.O. Box 3444, Seattle, Washington, 98114. CP 219 (exhibit to service declaration; tax parcel no. 3718-016-035-0002; identifying address of KKKKK, a Nevada corporation), 46-47 (recording cover sheet and Warranty Deed identifying address of Paul King).

As described below in the Statement of the Case, KKKKK Corporation was served with the summons and complaint in the tax foreclosure case in full accordance with the requirements of chapter 84.64 RCW because it was identified as the record titleholder of the tax parcel in the title report obtained by the County in connection with the foreclosure

action. CP at 38. The title report was in error, however. The title report was produced in substantial part based on documents that were recorded in the Recording Division of the Office of the Kitsap County Auditor (the "County Auditor"), which is an office that is part of respondent Kitsap County. "The county auditor shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected . . . ." RCW 36.22.010(1). Such records maintained by the County Auditor are business records within the meaning of The Uniform Business Records as Evidence Act, chapter 5.45 RCW, as such generally are admissible in evidence.

In the case of the tax parcel at issue, appellant Paul King obtained title to the parcel by virtue of a Statutory Warranty Deed issued by Thomas Bannister and Genise S. Lee, husband and wife, which deed was dated December 28, 1999 and recorded on January 3, 2000. CP at 48.

In a Warranty Deed dated July 1, 2005, Mr. King conveyed the tax parcel to KKKKK Corporation, CP at 47, which as noted above, shared the exact same mailing address as Mr. King.

Mr. King subsequently filed bankruptcy in the United States Bankruptcy Court for the District of Nevada. *In re Paul King, Debtor,* Case No. 10-11601 (Bankr. D. Nev. 2010), Dkt. No. 1.

Following the dismissal of Mr. King's 2010 bankruptcy proceeding without relief being granted, *In re Paul King, Debtor,* Case No. 10-11601 (Bankr. D. Nev. 2010), Dkt. No. 69, a deed signed by Paul King on behalf of KKKKK Corporation reconveyed the parcel back to Paul King. This reconveyance, although missed by the title company in its report, is a matter of public record in the Auditor's Office. CP at 61. Therefore, at the time the tax parcel was foreclosed upon, the record reflects that Mr. King was the sole record owner of the parcel.

Aside from the fact that KKKKK Corporation was served with the summons and complaint in full compliance with chapter 84.64 RCW, Messrs. Scannell and King have not demonstrated that they have any standing or authority to assert any arguments on behalf of KKKKK Corporation. Therefore, the Court of Appeals should disregard any arguments asserted by the appellants in the name of, or purportedly on behalf of, KKKKK Corporation.

IV. STATEMENT OF THE CASE

1. On May 14, 2014, respondent Kitsap County filed the summons and complaint in this real property tax foreclosure action. CP at 192-95 (summons), 1-3 (complaint).

2. On May 28, 2014, in accordance with the service requirements set forth in RCW 84.64.050(4), the County served the summons and

complaint via certified mail, return receipt requested, on the persons whose names appeared on the treasurer's rolls as the owners of the tax parcels being foreclosed upon. CP at 197-207. Among those served in this manner was appellant Paul King. CP at 202 (assessor's parcel no. 3718-016-035-0002).

3. On June 26, 2014, in accordance with the service requirements set forth in RCW 84.64.050(4), the County served the summons and complain via certified mail, return receipt requested, on those persons who were shown on title reports for the parcels as being the record titleholders (if different from the persons whose names appeared on the treasurer's rolls) of the real property parcels being foreclosed upon and on those persons who were shown on title reports for the parcels as having a recorded interest in or lien of record upon the tax parcels being foreclosed upon. CP at 208-224. Among those served in this manner were appellant John Scannell and KKKKK Corporation. CP at 219 (assessor's parcel no. 3718-016-035-0002).

4. On August 27, 2014, in accordance with the service requirements set forth in RCW 84.64.050(4), the County caused to be published in a newspaper of general circulation, which is circulated in the area of the tax parcels named in the action, the action's notice and summons. CP at 225.

5. On June 24, 2014 and September 15, 2014, in accordance with the service requirements set forth in RCW 84.64.050(4), the County served the summons and complaint via first-class mail on the persons whose names appeared on the treasurer's rolls as the owners of the tax parcels being foreclosed upon in those instances in which such persons refused or otherwise failed to sign for the copy of the summons and complaint that was previously mailed to them by certified mail, return receipt requested. CP at 413-17, 418-421.

6. On September 15, 2014, in accordance with the service requirements set forth in RCW 84.64.050(4), the County served the summons and complaint via first-class mail on those record titleholders, lienholders and/or persons having recorded interests in the tax parcels being foreclosed upon in those instances in which such persons refused or otherwise failed to sign for the copy of the summons and complaint that was previously mailed to them by certified mail, return receipt requested. CP at 226-29. Among those served in this manner was appellant John Scannell. CP at 229 (tax parcel no. 3718-016-035-0002).

7. Six notices of appearances were served on respondent Kitsap County and/or filed with the Superior Court. CP at 241-242. Among those who filed a notice of appearance was appellant John Scannell. CP at 4. Appellant Paul King did not serve or file a notice of appearance, nor

did KKKKK Corporation.

8. As of November 13, 2014, respondent Kitsap County had served with two documents styled answers, one of which had been filed with the Superior Court and one that apparently had not been. CP at 242.

9. On November 13, 2014, respondent Kitsap County noted up for hearing on November 21, 2014 on the Superior Court's regular Friday motion calendar the County's Application for Judgment Foreclosing Tax Liens. CP 422-23 (Note for Motion Docket), 230-242 (Application for Judgment Foreclosing Tax Liens). The application documents were served by first-class mail on the seven persons who had appeared in the action by serving or filing a notice of appearance and/or serving or filing an answer or other responsive pleading. CP 243-44. Among those so served was appellant John Scannell, because had filed a notice of appearance. CP 243-44 (declaration of service), 4 (notice of appearance of John Scannell). Appellant Paul King and KKKKK Corporation were not served with the Application for Judgment Foreclosing Tax Liens because neither had appeared in the action by serving or filing a notice of appearance or by serving or filing an answer or other responsive pleading.

10. On November 21, 2014, at the time the Superior Court called the case for hearing on respondent Kitsap County's Application for Judgment Foreclosing Tax Liens, appellant John Scannell stood up in

court, announced his presence and informed the court that he wished to file a document in open court. The court accepted the document for filing, which was entitled "Answer;/Declaration of John Scannell to Defer Taxes" and was dated the day of the hearing, November 21, 2014. CP at 5-6 ("Answer;/Declaration of John Scannell to Defer Taxes"), 7 (courtroom clerk's hearing minutes). After some discussion, the court granted the County's application for judgment and order of sale as to all tax parcels except the tax parcel on which Mr. Scannell was appearing, tax parcel exhibit no. 97, and continued the hearing as to entry of judgment on exhibit no. 97 to December 19, 2014 at 1:30 p.m. CP at 7 (courtroom clerk's hearing minutes), 8-13 (Judgment Foreclosing Tax Liens and Order of Sale).

11. On December 11, 2014, respondent Kitsap County noted up for presentation at the hearing previously scheduled by the court for December 19, 2014 the following three proposed orders: (1) Order Authorizing Entry of Judgment and Sale Order; (2) Judgment Foreclosing Tax Liens on Complaint Exhibit No. 97; and (3) Order of Sale for Complaint Exhibit No. 97. CP at 16-27. On the same date, the County filed a declaration in support of presentation of the proposed orders. CP at 30-64. The Notice of Presentation of Proposed Orders and the supporting declaration were timely served on appellant John Scannell on December

11, 2014. CP at 28-29 (declaration of service of proposed orders), 65-66 (declaration of service of supporting declaration). Neither Mr. King nor KKKKK Corporation was served because at no time had either filed or served a notice of appearance or a responsive pleading, nor had either of them communicated to the court or to counsel for the County, notwithstanding the fact that both had been validly served with the summons and complaint in accordance with statutory requirements.

12. On December 19, 2014, the continued hearing was held. Both appellant John Scannell and Alan Miles, counsel for respondent Kitsap County, participated. At the outset of the hearing, Mr. Miles advised the court that earlier that same day Mr. Scannell had sent to him via e-mail a document indicating that between the date of the original hearing and today's continued hearing appellant Paul King had filed for bankruptcy. Mr. Miles advised the Court that because Mr. King was the record owner of the property, judgment could not be entered against the property on that day because of operation of the bankruptcy automatic stay. Mr. Miles, however, advised the court that it appeared to the County that Messrs. Scannell and King were willfully employing tactics intended to improperly delay entry of judgment against the tax parcel owned by Mr. King. Mr. Miles further informed the court that the County believed that Mr. King's bankruptcy petition was legally deficient and would, in due course, be

dismissed. At the County's request, hearing on entry of the County's proposed orders as to tax parcel exhibit no. 97 was further continued until January 30, 2015. CP at 67 (courtroom clerk's hearing minutes), CP at 164:23 to 165:24 (report of December 19, 2014 proceedings).

13. Prior to January 30, 2015 hearing, the County learned that Mr. King's bankruptcy case had, in fact, been dismissed by the bankruptcy court less than 30 days after it had been filed. *In re Paul King, Debtor,* Case No. 14-18838 (Bankr. W.D. Wash. 2014), Dkt. No. 13.

14. On January 30, 2015, the continued hearing was held as previously scheduled by the court. Mr. Miles appeared on behalf of the County. Mr. Scannell did not appear, notwithstanding the fact that he had been expressly advised by the court at the December 19, 2014 hearing that the hearing was being continued until January 30, 2015 at 1:30 p.m. The Superior Court entered the three proposed orders that had been noted up for presentation by the County. CP at 68 (courtroom clerk's minutes), 69-75 (orders as entered).

15. On February 10, 2015, the County served notice of the planned tax judgment auction on Mr. Scannell via regular first-class mail and certified mail. CP at 247 (service by first-class mail), 268-69 (service by certified mail); RP at 31:1 to 32:9.

16. Neither Mr. Scannell nor Mr. King appealed the three orders

entered by the Superior Court at the hearing held on January 30, 2015.

17. On January 21, 2016 – almost a full year after the January 30, 2015 court orders were entered – Messrs. Scannell and King, without first obtaining an Order to Show Cause as required by CR 60(e)(2), noted up a motion under Superior Court Civil Rule 60 to set aside the January 30, 2015 court "order" "and/or" the March 2, 2015 sale of the tax parcel at public auction, asserting five different grounds for the motion.[3] CP at 76-87.

18. On January 29, 2016, after hearing oral argument by Mr. Scannell, movant pro se, and Mr. Miles, counsel for the County, the Superior Court entered an order denying Messrs. Scannell and King's motion to set aside the sale of the tax parcel. CP at 185-86.[4]

19. On February 26, 2016, Messrs. Scannell and King filed their Notice of Appeal of the Superior Court's denial of their CR 60 motion.

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[3] A true and correct copy of CR 60 is set forth in the Appendix to this brief.

[4] The order denying the motion did not contain findings of fact and conclusions of law. CP 185-86. Findings and conclusions are not necessary for an order deciding a CR 60 motion. CR 52(a)(5)(B). (A true and correct copy of CR 52 is set forth as in the Appendix this brief.) The trial court's ruling should be affirmed if the result reached is supported by any legal reason within the pleadings, the facts and the applicable law, even if the trial court did not consider it. *Vacca v. Steer, Inc.*, 73 Wn.2d 892, 895, 441 P.2d 523 (1968) (applying rule in context of affirming judgment); *City of Kirkland v. Steen*, 68 Wn.2d 804, 810, 416 P.2d 80 (1966) (same); *Steineke v. Russi*, 145 Wn. App. 544, 559-60, 190 P.3d 60 (2008) (same). Moreover, the Court of Appeals may read the trial court's written ruling in conjunction with its oral decision. *Vacca*, 73 Wn.2d at 895; *Schmechel v. Ron Mitchell Corp.*, 67 Wn. 2d 194, 197, 406 P.2d 962 (1965); *Nord v. Eastside Ass'n Ltd.*, 34 Wn. App. 796, 798, 664 P.2d 4 (1983).

20. On February 9, 2017 – almost one year after filing their Notice of Appeal of the denial of their first CR 60 motion and while this appeal was pending – Messrs. Scannell and King filed a *second* CR 60 motion with the Kitsap County Superior Court. CP 411-12. This motion rehashed the grounds set forth in the appellants' first CR 60 motion, but purported to supply additional "evidence" in support of certain of their contentions.

21. On March 10, 2017 – more than one year after filing the Notice of Appeal of the denial of the first CR 60 motion – a *third* CR 60 motion was filed. CP 411-12. As with their second CR 60 motion, this third motion rehashed the grounds set forth in the appellants' first CR 60 motion, while purporting to supply additional "evidence" in support of certain of their contentions.

22. On June 9, 2017, after hearing, the Superior Court entered an order declining to hear the second and third CR 60 motions. CP 411-12.

V. STANDARD OF REVIEW

A. Abuse of Discretion Standard Applies

Appellate review of a ruling on a motion to vacate is very limited. The review is generally limited to determining whether the trial court plainly abused its discretion in ruling on the motion. A trial court abuses its discretion in deciding a motion for relief from judgment *only when its exercise of discretion is manifestly unreasonable or is based on untenable*

grounds or reasons. *Vance v. Offices of Thurston County Com'rs*, 117 Wn. App. 660, 671, 71 P.3d 680 (2003), *reconsideration denied, review denied*, 151 Wn.2d 1013, 88 P.3d 965 (2004).

Arguments or theories for vacating the judgment that were not presented to the trial court will not be considered on appeal. *In re Marriage of Tang*, 57 Wn. App. 648, 655, 789 P.2d 118 (1990).

Further, a motion to vacate is not itself a substitute for an appeal, and claimed errors of law during trial will not be considered on such a motion. While an appeal is allowed from ruling on a motion to vacate, the appeal from the ruling does not bring the final judgment up for review. Therefore, trial errors affecting the final judgment are not brought up for review on appeal from the motion to vacate. If a party wishes to challenge the judgment on the basis of errors during trial, the appeal must be from the final judgment, not from the ruling on the motion to vacate. RAP 2.4(c); *In re Marriage of Tang*, 57 Wn. App. at 654.

B. Appellate Court Should Affirm on Any Tenable Ground

The trial court's ruling should be affirmed if the result reached is supported by any legal reason within the pleadings, the facts and the applicable law, even if the trial court did not consider it. *Vacca v. Steer, Inc.*, 73 Wn.2d 892, 895, 441 P.2d 523 (1968) (applying rule in context of affirming judgment); *City of Kirkland v. Steen*, 68 Wn.2d 804, 810, 416

P.2d 80 (1966) (same); *Stieneke v. Russi*, 145 Wn. App. 544, 559-60, 190 P.3d 60 (2008) (same).

VI. ARGUMENT

A. Introduction and Summary

The County's argument section begins by addressing the fact that invalidating tax deeds, as Messrs. Scannell and King are attempting to do here, is strongly disfavored, judicially and legislatively. The County then sets forth several affirmative arguments for why Messrs. Scannell and King's motion was properly denied by the Superior Court. The remainder of the argument section addresses specific issues raised by the appellants in their Opening Brief.

B. Invalidating Tax Deeds is Strongly Disfavored, Judicially and Legislatively

Although Messrs. Scannell and King attempt to infuse substance into their Opening Brief by making a range of different kinds of meritless arguments, the appellants, are, at bottom, *attempting to set aside a tax deed issued to the successful bidder following the sale of the tax parcel at issue at an open public auction. See* RCW 84.64.080(4) ("The county treasurer must immediately after receiving the order and judgment proceed to sell the property as provided in this chapter to the highest and best bidder."), 84.64.080(11) ("The county treasurer must execute to the purchaser of any piece or parcel of land a tax deed. . . ."), 84.64.080(12)

(specifying form of tax deed that must be issued to successful bidder at auction).

As discussed in the next argument section, our Legislature has established a special statutory procedure that must be followed by any person wishing to attempt to set aside a tax deed. Before discussing that special statutory scheme, however, it is important to place in context how of law treats attempts to invalidate tax deeds issued as a result of a foreclosure sale.

Both our courts and our Legislature have long accorded tax deeds a strong presumption of validity and placed a high burden on those seeking to challenge them.

Our Supreme Court has very long held that the invalidation of tax deeds is strongly disfavored. "When a tax title is sought to be overthrown, the burden is on the one who asserts its invalidity to overcome the deed by competent and controlling evidence." *Larson v. Murphy*, 105 Wash. 36, 39, 177 P. 36 (1919).

Our Legislature has also long enshrined this principle in statutory law, creating various strong presumptions in favor of tax deeds:

> *Deeds executed by the county treasurer, as aforesaid [that is, deeds issued as a result of real property tax foreclosure sale], shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his or her heirs and assigns, to the real property thereby conveyed of the following facts:* First, that the real property conveyed was

> subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; *second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed;* fourth, that the real property was sold for taxes, interest, and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; *sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real property sold for delinquent taxes rendered after January 9, 1926, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax has been paid, or the real property was not liable to the tax.*

RCW 84.64.180 (emphases added).

With these strong presumptions in favor of the validity of tax deeds in mind, we turn now to the County's specific arguments in opposition to the appellants' request for appellate relief.

C. Messrs. Scannell and King's CR 60 Motion Was Properly Denied Because They Failed to Comply With the Special Statutory Scheme Applicable to Attempts to Recover Property Sold for Taxes

To reduce the number of meritless claims such as that presented by Messrs. Scannell and King, the Legislature established a special mandatory statutory process that must be employed whenever a person seeks to recover property sold for taxes. *Because the Legislature has*

established such a special proceeding, the Superior Court Civil Rules, including CR 60, do not apply to the extent that they are inconsistent with the special statutory rules. See CR 1 (Superior Court Civil Rules govern the procedure in the Superior Court for civil matters except as provided in CR 81); CR 81(a) (Superior Court Civil Rules do not apply to extent that Legislature has enacted special statutory procedural requirements).

RCW 84.68.080 through 84.68.100 prohibit any person from attempting to recover property sold for property taxes unless the person: (a) first pays the county treasurer all taxes, penalties, interest and costs justly due and unpaid (or, when the action is against the property's purchaser, pays the purchaser); and (b) then proceeds by filing an action to recover the property, including filing a complaint that, among other things, specifically that states that all such taxes due and owing have paid (or tendered and payment wrongfully refused). RCW 84.68.080, 84.68.090. These special statutory requirements must be construed as imposing additional conditions whenever a person seeks to recover property sold for taxes. RCW 84.68.100.

Statutory Provisions

First, before attempting to recover any property sold for property taxes, *the person attempting to recover the property must first pay the county treasurer the full amount of all taxes, penalties, interest and costs*

due and owing (or, when the action is against the property purchaser, pay the purchaser):

> Hereafter no action or proceeding shall be commenced or instituted in any court of this state for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be recovered.

RCW 84.68.080.

Secondly, an attempt to recover property sold for taxes must proceed by a complaint that, among other things, specifically states that all such taxes have been paid in full:

> In all actions for the recovery of lands or other property sold for taxes, the complainant must state and set forth specially in the complaint the tax that is justly due, with penalties, interest and costs, that the taxes for that and previous years have been paid; and when the action is against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, the purchaser's assignees or grantees have been fully paid or tendered, and payment refused.

RCW 84.68.090.

These special statutory requirements apply in addition to all other requirements imposed by law:

> The provisions of RCW 84.68.080 and 84.68.090 shall be construed as imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes.

RCW 84.68.100.

Because Messrs. Scannell and King failed to comply with these special mandatory statutory procedural requirements, their CR 60 motion was properly denied.

D. Even if CR 60 Could Be Said to Apply, the Motion Was Properly Denied Because It Was Not Made Within a Reasonable Time

Even if CR 60 could be said to apply to an attempt to set aside a tax deed, the motion was properly denied because it was not made "within a reasonable time" as required under CR 60(b).

What constitutes a reasonable time to request relief from a judgment "is determined by examining the case facts and circumstances; the critical period is the time between when the party becomes aware of the order and when he or she filed the motion to vacate it." *Topliff v. Chicago Ins. Co.*, 130 Wn. App. 301, 305, 122 P.3d 922 (2005), *review denied*, 157 Wn.2d 1018, 142 P.3d 608 (2006) (citation omitted).

In this case, although Messrs. Scannell and King raise various spurious claims about defective notice, such as defective notice of sale, neither denies actually being served with the summons and complaint. Therefore, each was on notice well before the Court on January 30, 2015 entered the judgment and the order of sale as to Certificate of Delinquency No. 97 that unless each appeared and asserted a valid defense to entry of

judgment, the property described in Certificate of Delinquency No. 97 would be subject to foreclosure judgment and sale on (or after) December 2, 2014 – the auction sale date expressly stated no fewer than five times in the summons and complaint. *See* "Summons and Notice of Foreclosure of Liens for Delinquent Real Property Taxes, " CP at 192-96, and "Complaint for Foreclosure of Real Property Tax Liens," CP 1-3, which were filed with the Superior Court on May 14, 2014.

In this instance, the court orders the appellants seek to set aside were entered on January 30, 2015. CP at 69-75. Messrs. Scannell and King's motion to set the "court order" "and/or" the parcel sale was noted – without first obtaining an Order to Show Cause, as required by CR 60(e)(2) – on January 21, 2016. *Under the circumstances of this case, the appellants' waiting almost a full year before filing their CR 60 motion is clearly unreasonable.*

The Court of Appeals should reject any argument by Messrs. Scannell and King that a one-year delay in filing their CR 60 was somehow justified under the circumstances presented. The "evidence" that "misrepresentations" were made to them about the timing of the auction and that proper posting of the notice of sale was not accomplished was all known to them, or should have been known to them, prior to the time they filed their CR 60 motion or, at best, within a couple of days

following entry of the Superior Court's three orders on January 30, 2015 or the Superior Court's January 29, 2016 order denying their CR 60 motion.[5]

Therefore, even if a CR 60 motion was a valid legal mechanism for the appellants to seek to set aside the tax deed, the CR 60 motion was properly subject to denial because it was untimely filed.

E. Even if CR 60 Could Be Said to Apply, the Motion Was Properly Denied Because It Failed to Set Forth Facts Constituting a *Valid Defense* to the Foreclosure Action

Further, even if CR 60 could be said to apply, the motion was properly denied because it failed to set forth facts constituting a *valid defense* to the foreclosure action.

CR 60(e)(1) requires a motion to vacate a judgment to set forth, among other things, "the facts constituting a *defense* to the action or proceeding" (emphasis added). If a movant has no defense to an action, it would be a waste of judicial resources for a court to entertain a CR 60 motion only eventually to conclude that the movant had no defense to

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[5] The Court of Appeals should reject any argument by the appellants' that their one-year delay in filing their filing their CR 60 motion was somehow justified, at least in part, by the need to "investigate" the accuracy of the County's filing on February 2, 2016 of its Declaration of Posting of Tax Judgment Notice of Sale as to Exhibit No. 97, CP at 266-67. This declaration was filed after the Superior Court's January 29, 2016 entry of the order denying their CR 60 and, further, was not filed at the request of the Superior Court. Because this declaration was not a part of the record before the Superior Court, and the Superior Court at the January 29, 2016 hearing did not request or require that it be filed, it played no role in the Superior Court's January 29, 2016 denial of the appellant's CR 60 motion.

entry of the judgment.

Although Messrs. Scannell and Mr. King raise various spurious claims, neither denies actually being served with the summons and complaint. Furthermore, none of their various distorted factual and legal contentions would constitute a valid *defense* on the merits to the judgment that the Court entered on January 30, 2015.

Neither paying the taxes due before sale nor any other distorted factual or legal contention made by the appellants constitutes a valid "defense" on the merits within the meaning of RCW 84.64.080, which governs a trial court's decision about whether or not judgment is to be entered as to a given tax parcel. *See* RCW 84.64.080(1) ("The court must examine each application for judgment foreclosing a tax lien, and if a defense (specifying in writing the particular cause of objection) is offered by any person interested in any of the lands or lots to entry of judgment, the court must hear and determine the matter in a summary manner, without other pleadings, and pronounce judgment. However, the Court may, in its discretion, continue a case in which a defense is offered, to secure substantial justice to the contestants.")

An example of a *valid defense* on the merits would be that the taxes due were, in fact, paid *before* the foreclosure action was commenced, or that *before* commencement of the foreclosure action the taxes due were

tendered to the treasurer's office but were wrongly refused.

Here, the appellants have offered no valid defense to entry of judgment. First, as described above in the Statement of the Case (Section 10), on the very day that judgment was to be entered as to all unredeemed parcels, including the tax parcel at issue in this appeal, Mr. Scannell stood, announced his presence in court and asked to have filed in open court a document entitled "Answer;/Declaration of John Scannell to Defer Taxes." This document, dated the same date as the hearing at which it was presented, consisted of a "declaration" that Mr. Scannell was 66 years of age and had a disposable income of less than $40,000 per year. This document asked that the hearing on judgment as to the tax parcel in question be "set over so that these issues can be dealt with." CP at 5-6. The "answer/declaration" did not allege that Mr. Scannell – or, more relevantly, Mr. King, the owner of the parcel – actually qualified for partial real property tax exemption or had obtained such exemption for the tax years being foreclosed upon. Indeed, Mr. Scannell stated in his "answer/declaration": "As far as I know, no [special tax deferral] program is available." CP at 5-6. Such allegations, even if true, would not constitute a valid defense or objection to tax foreclosure within the meaning of RCW 84.64.080(1). In the event, the Superior Court in entering its January 30, 2015 "Ordering Authorizing Entry of Judgment

and Sale Order," expressly held: "The Court finds and concludes that Mr. Scannell has demonstrated no valid defense to entry of judgment and order of sale as to complaint exhibit no. 97." CP 70:10 to 70:11.

As explained in the Statement of the Case (Section 11), the County timely served Mr. Scannell with all three proposed orders prior to the January 30, 2015 hearing at which they were entered. CP at 28-29, 65-66. He raised no objection to the proposed orders and, indeed, did not bother to attend the hearing, notwithstanding the fact that he had notice of the hearing both because he was served with notice of presentation of the proposed orders and because the Superior Court at the December 19, 2014 hearing expressly advised both parties that the matter would be heard on January 30, 2015 at 1:30 p.m.[6]

F. Even if CR 60 Could Be Said to Apply, the Superior Court Properly Denied the Appellants' CR 60 Motion Because It is Meritless (Appellants' Assignment of Errors Nos. 1-6; Appellants' Issues Relating to Assignment of Errors Nos. 1-7)

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[6] Moreover, the argument by the appellants, Opening Brief at 5, that Mr. King, in an e-mail message to the Kitsap County treasurer's office, raised a valid defense by stating that he intended to "defend" against the action "by raising funds to pay the taxes" is meritless. Any statement that Mr. King intended to pay the taxes owing is an *admission of liability*, not a *defense* to the action. At no point in this proceeding has either Mr. Scannell or Mr. King claimed that the taxes were not justly due and owing.

1. Appellants' Claim of Misrepresentation is Groundless (Assignments of Error Nos. 1 and 6; Issues Relating to Assignments of Error Nos. 1 and 5)

If, notwithstanding all of the arguments above, the Court of Appeals considers the substance of the appellants' claims, the Court of Appeals should deny the motion on its merits (or lack thereof).

First, Messrs. Scannell and King weakly argue at various points in the Opening Brief, *see, e.g.,* pp. 12-14 (arguing the grounds of "misrepresentation or mistake") that the County somehow "misled" them as to when the auction of the tax parcel in question would occur. This argument was speciously constructed after the fact with the apparent intention of trying to convince the Court of Appeals that the County somehow acted improperly in its handling of the sale of the tax parcel in question.

First, as set forth in detail in the County's Statement of the Case, the County followed the statutorily required steps for conducting a tax foreclosure action.

Secondly, with regard to "misrepresentation" claims generally, the County notes that a party attacking a judgment under CR 60(b)(4) based on misrepresentation must establish the misrepresentation by "clear and convincing evidence. *Lindgren v. Lindgren*, 58 Wn. App. 588, 597, 794 P.2d 526 (1990). Messrs. Scannell and King have not demonstrated any

misrepresentation, much less have they done so by clear and convincing evidence.

The ground of misrepresentation is based on Messrs. Scannell and King's spurious contention that the County somehow mislead them into believing that the tax parcel in question would not be sold until some unspecified date in the future. Opening Brief at 13-14. They first claim that counsel stated this as a fact in the initial November 21, 2014 hearing. Although the assertion is not supported by a citation to the record in the argument section of the appellants' Opening Brief, the transcript of that hearing, CP 136-158, demonstrates that this argument is specious for two reasons. First, counsel for the County specifically stated: "Now, I don't know whether – I suppose maybe it would be useful to have the hearing [continued] because otherwise, in one year's time, we will end up in the same situation. [¶] So the matter is being continued to December 19th . . . ." CP at 154:20 to 154:24. Secondly, consistent with the matter being continued until December 19, 2014, both counsel for the County and Mr. Scannell appeared at that hearing. CP 67 (courtroom clerk's minutes of December 19, 2014 hearing).

Messrs. Scannell and King attempt to bolster their argument that they were somehow mislead into believing that the tax parcel in question would not be sold until some unspecified time in future because of an

statement allegedly appearing on the County's website that tax foreclosure auctions are generally held once a year. This argument is unavailing. First, from a strictly evidentiary perspective, such an assertion was not admissible before the Superior Court because: (a) it lacks an evidentiary foundation – among other things, there was no adequate foundation laid as to what the webpage alleged stated, when the webpage was posted, and when the appellants allegedly reviewed and reasonably relied upon it. Moreover, the appellants' contention about the webpage statement, even if true, would have been hearsay for which no exception applies. On a more practical level, even if the appellants' assertion in this regard were true, they have not established that: (a) the webpage excluded the possibility of auctions occurring other than on a strictly annual basis; and (b) that the appellants relied upon the webpage's alleged statement such that it somehow "tricked" them into thinking that the tax parcel would not be sold when it was. The appellants' assertion is particularly unbelievable given that Mr. Scannell, from the initial judgment-application hearing on November 21, 2014 to the first continued hearing on December 19, 2014 to the final hearing on January 30, 2015 knew exactly what the purpose of the those hearings was: to have court orders entered allowing the parcel to be sold at tax foreclosure promptly. *See* RCW 84.64.080(4) ("The county treasurer must immediately after receiving the order and judgment proceed

to sell the property as provided in this chapter to the highest and best bidder.")

Finally, clear statements made at the original November 21, 2014 hearing and the December 19, 2014 hearing belie Messrs. Scannell and King's claims that they were misled into believing that the sale of the tax parcel would be proceed. At the November 21, 2014, the following colloquy between the Superior Court and Mr. Scannell occurred:

> MR. SCANNELL: Okay.
>
> THE COURT: All right? *Otherwise what is likely to happen is that at the next hearing, if I am on the calendar, I would grant the County's motion for the judgment on the tax lien, and the property – the foreclosure process for the property will be started.*
>
> MR. SCANNELL: Okay.
>
> THE COURT: Now, I am doing this more out of an interest in fairness than I am utilizing a procedurally-correct process. This is more of an equitable relief than it is under the rules for procedural relief. . . .

CP at 151:8 to 151:18 (emphasis added).

The hearing was continued until December 19, 2014, at which time it emerged that appellant Paul King had filed for bankruptcy between the November 21, 2014 hearing and the December 19, 2014 hearing. Because it appeared to counsel for the County that Mr. Scannell and Mr. King were employing improper tactics to avoid entry of judgment against the tax parcel, and Mr.

Miles informed the Superior Court that an earlier bankruptcy filed by Mr. King had been dismissed by the Bankruptcy Court without relief being granted, the County requested that the Court continue the hearing on entry of the judgment for six weeks. The Court advised both parties that the hearing was being continued until January 30, 2015 at 1:30 p.m. CP at 162:11 to 166:18. The following colloquy occurred at the close of the hearing:

> THE COURT: All right. I think we can go ahead and adjourn this matter today, Mr. Scannell, just to be heard on the 30th.
>
> MR. SCANNELL: Okay.
>
> THE COURT: Okay. So I will see you in my court on January 30th at 1:30.
>
> MR. MILES: Thank you, Your Honor.
>
> MR. SCANNELL: Yes.

CP at 168:9 to 168:20.

At a consequence, it is clear from the record that Mr. Scannell was well-aware of precisely what hearing were being held and what the purpose of the hearings was.

2. Appellants' Claim of That Statutory Process Was Not Properly Followed is Groundless (Assignment of Error No. 5; Issues Relating to Assignments of Error Nos. 4 and 6)

Messrs. Scannell and King also claim that "the required steps [for

tax foreclosure] had not been taken and it is now too late to conduct the sale on that years [*sic*] auction." Opening Brief at 1, 2, 20-22. The appellants supplied no credible, admissible evidence to the Superior Court that the steps required by chapter 84.64 RCW had not been followed. Specifically with regard to statutorily required postings of the notice of sale, the appellants' argument hinges on their claim that one of the places of postings was the Norm Dicks Government Center in Bremerton. Opening Brief at 10 (Section 28). This claim, however, is premised on pages excerpted from a deposition taken in a separate case. As such, it is inadmissible. Aside from the appellants' failing to lay any evidentiary foundation for admission of this deposition testimony, any statement contained in the excepted pages constitutes hearsay and no applicable exemption made it admissible before the Superior Court. *See* ER 801 (definition of hearsay), 802 (hearsay rule), 803-804 (hearsay exceptions).

Moreover, even if the appellants had established by admissible evidence that one of the places of postings was the Norm Dicks Government Center, their attempt to "prove" that such a posting was legally and practically impossible must fail. In their effort to "prove" that no such posting could have been made, the appellants offered up purported building rules that they content demonstrate that such a posting would have been impossible. These rules, however, are stated to have been

obtained through one or more requests to personnel at the building in question. The rules could not have been properly considered by the Superior Court because the documents proffered: (a) lacked any evidentiary foundation for admission into evidence (including testimony from a qualified witness as to the rules' provenance, validity and effective dates); (b) constituted inadmissible hearsay; and (c) did not in their substance even establish the posting prohibition the appellants assert. Further, even if all of these evidentiary objections had been met, the appellants could not, and did not, demonstrate to the Superior Court that any purported restriction or prohibition was not expressly or impliedly waived or that any such posting occurred notwithstanding the rules, which even if valid, would have been enforceable solely against the buildings' owners and tenants.

3. Appellants' Contention That KKKKK Corporation and Appellant Paul King Were Entitled to Notice of the Hearing at Which Judgment Was Entered is Groundless (Assignment of Error No. 5; Issues Relating to Assignments of Error Nos. 4 and 6)

Messrs. Scannell and King additionally contend that KKKKK Corporation and Mr. King were entitled to receive notice. Although unclear, they appear to be arguing that KKKKK Corporation and Mr. King were entitled to notice of the original November 21, 2014 hearing and/or notice of the proposed sale of the tax parcel. Opening Brief at 1

(Assignment of Error No. 2; Issue Relating to Assignment of Error No. 2), 15-17.

The claim that KKKKK Corporation was entitled to notice of the original November 21, 2014 hearing and/or of the notice of proposed sale is puzzling. As explained above (Section III(D)), KKKKK Corporation was a Nevada corporation having the exact same mailing address as Mr. King. Mr. King transferred title to the tax parcel into the name of this corporation prior to Mr. King's filing bankruptcy and, after his bankruptcy proceeding was dismissed without any relief being granted, Mr. King, as an agent of the corporation, signed a deed transferring title back to himself. At the time of the tax foreclosure, KKKKK Corporation was not the owner of the parcel; only Mr. King was. Moreover, there is no dispute that, out of an abundance of caution, KKKKK Corporation was validly served with the summons and complaint in the tax foreclosure action, that the corporation did not appear in the action by serving a notice of appearance and/or filing an answer or other pleading responsive to the complaint, and that the corporation did not join in this appeal. Finally, as previously pointed out, Mr. Scannell and Mr. King have not demonstrated that they have any standing or other authority to assert such a claim on behalf of the corporation. Therefore, the claim that KKKKK Corporation was entitled any notice beyond being served with the summons and

complaint is groundless.

With respect to Mr. King, there is no dispute that Mr. King was properly served with the summons and complaint and that he failed to appear in the action by serving the plaintiff with a notice of appearance or by filing an answer or other pleading responsive to the complaint.

The appellants, while acknowledging that Mr. King failed to comply with the plain appearance requirements set forth in RCW 4.28.210, argue that he substantially complied with the appearance requirements by engaging in a series of brief e-mail exchanges with an employee of the County treasurer's office.[7]

While our state's courts have recognized that a party may be deemed to have appeared in an action, thus entitling him or her to notice of application for judgment, by "substantially complying" with RCW 4.28.210, the law and the facts in this case do not support a finding of substantial compliance.

While our courts have held that, in limited circumstances, a party may be found to have substantially complied with requirements for making an appearance, among other things, *an informal means of making an appearance in an action must convey an intent to defend or request*

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[7] Only Mr. King has standing to litigate the issue of whether or not he appeared in the action.

affirmative relief from the court, constituting a submission to the court's jurisdiction. Communications by the party with the plaintiff's representatives or acts that do not convey an intent to defend or request affirmative relief from the court are insufficient to constitute an "appearance." Moreover, an appellate court will not substitute its judgment for that of the trial court. The Court of Appeals will not disturb the trial court's determination of whether a party has appeared unless the trial court's determination was manifestly unreasonable or was based on untenable grounds or untenable reasons. *Professional Marine Co. v. Those Certain Underwriters at Lloyd's*, 118 Wn. App. 694, 708-11, 77 P.3d 658 (2003).

Here, Mr. King's sole claim to have "appeared" in the action is said to arise from a brief series of e-mail messages he exchanged with a single low-level employee of the County treasurer's office. Opening Brief at 15; CP at 95-96.

First, it is relevant to note that e-mail communication with Mr. King was actually *initiated by the County treasurer's office* as part of that office's customary outreach to delinquent taxpayers in an effort to avoid foreclosure. *See* CP 96 (initial August 18, 2014 e-mail message from County treasurer's office program assistant to Mr. King). Moreover, these handful of brief e-mail message exchanges were in *each instance* initiated

by the treasurer's office, not by Mr. King, who passive responded to the inquiries by the treasurer's office. CP 95-96.

Mindful that our courts hold that an informal means of making an appearance in an action *must convey an intent to defend against the action*, *Professional Marine Co.*, 118 Wn. App. at 708, the appellants make the following claim regarding these e-mail exchanges: "In these emails he [Mr. King] indicated that he was raising money and attempting to pay as a *defense* to the action." Opening Brief at 15 (emphasis added). This claim is disingenuous. *A statement by a property owner that he intends to pay the delinquent property taxes owed is an admission of liability, not a defense to liability.* Therefore, Mr. King cannot plausibly claim that these brief e-mail messages constitute an "appearance" in this action pursuant to RCW 4.28.210.

The Court of Appeals will not disturb the trial court's determination of whether a party has appeared unless the trial court has abused its discretion. *Professional Marine Co.*, 118 Wn. App. at 708. Here, the Superior Court considered the specific facts presented and concluded that Mr. King's minimalistic and reactive communications did not constitute an appearance entitling him to notice in the action:

> THE COURT: [M]r. King, as noted by the prosecutor, has not appeared, ever, in this action.
>
> And it is not a valid notice of appearance in a court

> action for Mr. King to simply send an e-mail to the treasurer's office. Mr. King, if he was going to appear in this action, was required to notify the court, not to notify someone who could potentially be a witness in the case.

RP at 52:19 to 53:1.

The Superior Court did not abuse its discretion in concluding that Mr. King never appeared in the action. Therefore, he was not entitled to notice in the action.[8]

4. Appellants' Contention That the County Was Not Authorized to Sell the Tax Parcel via Internet Auction is Meritless (Assignment of Error No. 3; Issue Relating to Assignments of Error No. 3)

The appellants next contend that the County could only lawfully conduct a public auction of the tax parcel exclusively at a physical location – that a sale via an Internet auction was legally invalid. Opening Brief at 1

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[8] In support of their argument that Mr. King was entitled to receive notice of the proposed sale of the parcel at auction, the appellants seized on an inadvertent misstatement by the judge at the January 29, 2016 hearing on the merits of the CR 60 motion. Opening Brief at 9 (Section 25). It is true that the judge, in the course of a heated and prolonged one-hour argument, asked counsel for the County the following question: "So with respect to the compliance with the court order that I issued in January of 2015, was there notice of the sale to *Mr. King* by Certified Mail?" RP at 30:11 to 30:14 (emphasis added). The appellants' argument in this regard is disingenuous. First, the context of the discussion makes it abundantly clear that the issue being discussed was whether or not *Mr. Scannell*, not Mr. King, had received notice of the sale, because Mr. Scannell was arguing that he had not received such notice. Moreover, each of the three January 30, 2015 court orders to which the judge was referring clearly specify that notice of the proposed sale *was to be provided exclusively to Mr. Scannell.* CP at 69-75. Finally, at that very January 26, 2016 hearing, the judge expressly ruled that appellant Paul King had taken no action that constituted an "appearance" entitling him to notice of any kind prior to judgment being entered or the parcel's being sold. RP at 52:19 to 53:1 ("Mr. King, as noted by the prosecutor, has not appeared, ever, in this action. [¶] And it is not a valid notice of appearance in a court action for Mr. King to simply send an e-mail to the treasurer's office. Mr. King, if he was going to appear in this action, was required to notify the court, not to notify someone who could potentially be a witness in the case.")

(Assignment of Error No. 3), 2 (Issue Relating to Assignment of Error No. 3), 17-20.

This contention is meritless. The purpose of the Legislature's enactment of Laws 2015 ch. 95 was to clearly codify then common practice of counties around the state to conduct public auctions via the Internet. Conducting tax foreclosure auctions via the Internet both reduces the cost of conducting such auctions and enables more bidders to participate in the auction. Because properties are exposed to a national marketplace of bidders, winning bids tend to be higher than would be the case if the auction were conducted before a limited group of local bidders who gather in a single, physical location. *Because all sale proceeds are refunded directly to the record owner of the property upon application after the costs of sale, property taxes and recorded water-sewer district liens have been paid, national auctions conducted via the Internet benefit the record titleholder and not the County. See* RCW 84.64.080 ("If the highest amount bid for any separate unit tract or lot exceeds the minimum bid due upon the whole property included in the certificate of delinquency, the excess must be refunded, following payment of all recorded water-sewer district lens, on application therefor, to the record owner of the property."

The fact that the Legislature intended to codify the existing statewide practice of conducting tax foreclosure auctions via the Internet was made clear in the bill passed by the Legislature: "The *legislature intends* to grant counties in Washington *clear authority* to conduct public auctions via the internet, *potentially reducing sale costs and enabling more bidders to participate*." Laws 2015 ch. 95, § 1 (emphases added). This intention to codify the existing practice of counties to conduct such auctions via the Internet was underscored in the Final Bill Report for SB 5768, which stated that the purpose of the bill was to "*explicitly authorize* counties to conduct tax foreclosure auctions over the Internet." Final Bill Report (SB 5768) at 2 (emphasis added).

Secondly, even if the purpose of the law had not been to codify the existing practice of conducting auctions via the Internet, counties conducting tax foreclosure auctions via the Internet would still be in substantial compliance with the requirements of RCW 84.64.080(5), particularly where, as was the case in Kitsap County, the physical place of the auction was designated as the Office of the Kitsap County Treasurer and one or more Internet-connected computer terminals were made available to members of the general public to enable them to place bids from that physical office. *See, e.g., People for Preservation and Development of Five Mile Prairie v. City of Spokane*, 51 Wn. App. 816,

820, 755 P.2d 836 (1988) (doctrine of substantial compliance may be applied to statutory requirements that are jurisdictional or procedural in nature; determining consideration is whether purpose of statutory requirement has been fulfilled).

Thirdly, the appellants have waived any objection to the sale having been conducted over the Internet and, moreover, are estopped to assert an objection. The summons, CP at 192-95 (Paragraph 3), and the complaint, CP 1-3 (Paragraph 13), as well as the Superior Court's June 30, 2015 Order of Sale for Complaint Exhibit No. 97, CP at 74-75, all expressly disclose that the sale of tax parcels was to be held via Internet auction. By having actual (or at least constructive notice) of this fact and failing to object, the appellants have waived any such objection or, in the alternative, are estopped to deny that a sale conducted in such a manner was legally proper.

Finally, as a matter of public policy, fairness and equity, it is noted that because tax foreclosure sales conducted via the Internet typically result in higher bids and involve lower sale costs (which costs, pursuant to RCW 84.64.080(4), are ultimately borne by the property owner and not by the county), property owners benefit from the use of such a sale procedure; they cannot legitimately contend that they suffer prejudice by use of the procedure.

5. Appellants' Contention That Mr. Scannell Had Standing to Challenge the Tax Deed is Meritless (Assignment of Error No. 3; Issue Relating to Assignments of Error No. 3)

Finally, while it is not necessary for the Court of Appeals to reach the issue to decide this case, the County addresses the appellants' contention that the Superior Court wrongly concluded that Mr. Scannell had no standing to bring a CR 60 motion.[9][10]

In the course of this litigation, Mr. Scannell has admitted that his sole recorded interest in the tax parcel at issue was a two-page document entitled "Lease" that was dated December 28, 1999, was recorded with the county auditor on June 16, 2003, and that, by its own terms, expired on December 31, 2009. The lease included an option-to-purchase provision and allowed for the possibility to two 10-year renewals of the lease term. CP at 63-64. Mr. Scannell's position on the legal significance of this document has morphed implausibly over time. The "answer/declaration" that Mr. Scannell filed in open court at the original hearing on November 21, 2014 states: "I am an owner by virtue of contenancy [*sic*] although this is disputed by the other co-tenant." CP at 5 (Paragraph 3). Upon

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[9] Only Mr. Scannell has standing to litigate this.

[10] At the January 29, 2016 hearing on merits of Messrs. Scannell and King's CR 60 motion, Mr. King did not appear in court or participate in the hearing. Instead, Mr. Scannell appeared alone and made all oral arguments in support of the motion. After extensive argument between the judge and Mr. Scannell, the Superior Court ruled, among other things, that Mr. Scannell did not have standing. CP at 9:4 to 30:2.

inquiry by the Superior Court at that initial hearing, it was revealed that Mr. Scannell over the years had filed two different quiet title actions – one against Mr. King and one against both Mr. King and KKKKK Corporation. Both of those quiet-title actions were dismissed without the cases being resolved on the merits. CP at 137:9 to 143:1.

At the January 29, 2016 hearing on the CR 60 motion, Mr. Scannell appeared to concede that there was nothing in writing bearing on his interest, if any, in the tax parcel, other than the lease that by its own terms expired on December 31, 2009. Instead, he appeared to concede that he had no ownership interest in the tax parcel at the time of tax foreclosure. Instead, he implied that the lease had been *orally* renewed for 10 years and that this purported oral renewal, which included an option to purchase a partial interest in the tax parcel, survived the tax foreclosure sale of the parcel. On this basis, he contended that he had a sufficient interest in the parcel to warrant a finding that he had standing to file and argue the CR 60 motion. RP 8:16 to 30:2.

After an extended colloquy between the Superior Court and Mr. Scannell, the Superior Court, citing the statute of frauds, ruled that even if Mr. Scannell had, as he appeared to be claiming, purportedly attempted to orally renew the lease document for a 10-year period, such a purported oral renewal would have been invalid. RP at 46:3 to 50:20.

Generally, any agreement, contract or promise that by its terms is not to be performed in one year from its making is void. RCW 19.36.010. Specifically with respect to leases, a lease for over one year must be in deed form – that is, it must be written signed by the landlord and acknowledged. RCW 64.04.010, 64.04.020; *Haggen v. Burns*, 48 Wn.2d 611, 295 P.2d 725 (1956); *Labor Hall Ass'n v. Danielsen*, 24 Wn.2d 75, 163 P.2d 167 (1945). If a lease fails to comply with the applicable statute of frauds, either because it is not in writing or is not acknowledged, the instrument itself is, without more, wholly void. *See, e.g., Labor Hall Ass'n v. Danielsen,* 24 Wn.2d at 75, 163 P.2d 167 (1945); *Vance Lumber Co. v. Tall's Travel Shops*, 19 Wn.2d 414, 142 P.2d 904 (1943).

Real property tax liens imposed pursuant to chapter 84.60 RCW enjoy priority over encumbrances and other private interests in the real property, regardless of when the other interest arose or attached to the property. RCW 84.60.010. Moreover, our Supreme Court and Court of Appeals have consistently and clearly held that a purchaser at a real property tax foreclosure sale generally takes title to the property free and clear of all previously existing encumbrances and interests. Upon the sale and issuance of a tax deed pursuant to RCW 84.64.080(11)-(12), a new chain of title commences. The only exception to this rule is one created by statute for electric utility easements and easements appurtenant that were

established of record prior to the year for which the tax was foreclosed. RCW 36.35.290. *See, e.g., Lake Arrowhead Community Club, Inc. v. Looney*, 112 Wn.2d 288, 291, 770 P.2d 1046 (1989) (general rule in Washington is that purchaser at tax foreclosure sale takes title to property free and clear of all previously existing encumbrances).

Thus, based on the law and on all credible, admissible evidence presented to the Superior Court, the court correctly concluded that Mr. Scannell had no standing to bring the CR 60 motion.

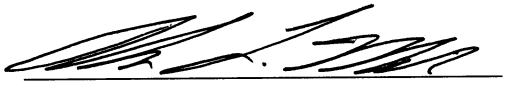
VII. CONCLUSION

For the foregoing reasons, the Court of Appeals should affirm the Superior Court's denial of Messrs. Scannell and King's CR 60 motion.

DATED: August 17, 2017.

Respectfully submitted,

TINA R. ROBINSON
Kitsap County Prosecuting Attorney



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Senior Deputy Prosecuting Attorney

Attorney for Respondent Kitsap County

APPENDIX

Chapter 84.64 RCW

LIEN FORECLOSURE

Chapter Listing | RCW Dispositions

Sections

84.64.005
Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Date of delinquency" means the date when taxes first became delinquent.

(2) "Electronic funds transfer" has the same meaning as provided in RCW **82.32.085**.

(3) "Interest" means interest and penalties.

(4) "Taxes;" "taxes, interest, and costs;" and "taxes, interest, or costs" include any assessments and amounts deferred under chapters **84.37** and **84.38** RCW, where the assessments and deferred amounts are included in a certificate of delinquency by the county treasurer.

[2015 c 95 § 10; 2013 c 221 § 11.]

NOTES:

Intent—2015 c 95: See note following RCW **36.16.145**.

84.64.040
Prosecuting attorney to foreclose on request.

The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment and forms of notice and summons when the same are required, and shall prosecute to final judgment all actions brought by holders of certificates under the provisions of this chapter for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: PROVIDED, Said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per RCW **84.64.120**: PROVIDED, FURTHER, That nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he or she so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and RCW **84.64.120**: AND PROVIDED, ALSO, That in no event shall the county prosecuting attorney collect any fee for the services herein enumerated.

[**2013 c 23 § 375; 1961 c 15 § 84.64.040.** Prior: **1925 ex.s. c 130 § 116;** RRS § 11277; prior: **1903 c 165 § 1; 1899 c 141 § 14.**]

84.64.050
Certificate to county—Foreclosure—Notice—Sale of certain residential property eligible for deferral prohibited.

(1) After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer must proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs. However, the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

(2) Certificates of delinquency are prima facie evidence that:

(a) The property described was subject to taxation at the time the same was assessed;

(b) The property was assessed as required by law;

(c) The taxes or assessments were not paid at any time before the issuance of the certificate;

(d) Such certificate has the same force and effect as a lis pendens required under chapter **4.28** RCW.

(3) The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. However, if the department of revenue has previously notified the county treasurer in writing that the property has a lien on it for deferred property taxes, the county treasurer must include in the certificate of delinquency any amounts deferred under chapters **84.37** and **84.38** RCW that remain unpaid, including accrued interest and costs.

(4) The treasurer must file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer must thereupon, with legal assistance from the county

prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer must send notice by regular first-class mail. The notice must include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice is sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property must be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property must be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder. However, prior to the sale of the property, the treasurer must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders must be considered and treated as the owner or owners of the property for the purpose of this section, and are entitled to the notice provided for in this section. Such title search must be included in the costs of foreclosure.

(5) If the title search required by subsection (4) of this section reveals a lien in favor of the state for deferred taxes on the property under RCW **84.37.070** or **84.38.100** and such deferred taxes are not already included in the certificate of delinquency, the county treasurer must issue an amended certificate of delinquency on the property to include the outstanding amount of deferred taxes, including accrued interest. The amended certificate of delinquency must be filed with the clerk of the court as provided in subsection (4) of this section.

(6) The county treasurer may not sell property that is eligible for deferral of taxes under chapter **84.38** RCW but must require the owner of the property to file a declaration to defer taxes under chapter **84.38** RCW.

[**2013 c 221 § 12; 1999 c 18 § 7; 1991 c 245 § 25; 1989 c 378 § 37; 1986 c 278 § 64.** Prior: **1984 c 220 § 19; 1984 c 179 § 2; 1981 c 322 § 4; 1972 ex.s. c 84 § 2; 1961 c 15 § 84.64.050;** prior: **1937 c 17 § 1; 1925 ex.s. c 130 § 117;** RRS § 11278; prior: **1917 c 113 § 1; 1901 c 178 § 3; 1899 c 141 § 15; 1897 c 71 § 98.**]

NOTES:

Severability—1986 c 278: See note following RCW **36.01.010**.

84.64.060
Payment by interested person before day of sale.

(1) Any person owning a recorded interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the day of the sale; and for the amount so paid he or she will have a lien on the property liable for taxes, interest, and costs for which judgment is prayed; and the person or authority who collects or receives the same must give a receipt for such payment, or issue to such person a certificate showing such payment. If paying by agent, the agent must provide notarized documentation of the agency relationship.

(2) Notwithstanding anything to the contrary in this section, a person need not pay the amount of any outstanding liens for amounts deferred under chapter **84.37** or **84.38** RCW, if such amounts have not become payable under RCW **84.37.080** or **84.38.130**.

[2015 c 86 § 315; 2003 c 23 § 4; 2002 c 168 § 9; 1963 c 88 § 1; 1961 c 15 § 84.64.060. Prior: **1925 ex.s. c 130 § 118;** RRS § 11279; prior: **1897 c 71 § 99.**]

84.64.070
Redemption before day of sale—Redemption of property of minors and legally incompetent persons.

(1) Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the close of business the day before the day of the sale, by payment, as prescribed by the county treasurer, to the county treasurer of the proper county, of the amount for which the certificate of delinquency was issued, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of the certificate of delinquency until paid.

(2) The person redeeming such property must also pay the amount of all taxes, interest and costs accruing after the issuance of such certificate of delinquency, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made.

(3) No fee may be charged for any redemption.

(4) Tenants in common or joint tenants must be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in RCW **84.64.060** for the redemption of real property other than that of persons adjudicated to be legally incompetent or minors for purposes of this section.

(5) If the real property of any minor, or any person adjudicated to be legally incompetent, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the date of sale upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner must pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf.

(6) Notwithstanding anything to the contrary in this section, a person may redeem real property under this section without the payment of any outstanding liens for amounts deferred under chapter **84.37** or **84.38** RCW, if such amounts have not become payable under RCW **84.37.080** or **84.38.130**.

[**2015 c 86 § 316; 2002 c 168 § 10; 1991 c 245 § 26; 1963 c 88 § 2; 1961 c 15 § 84.64.070.** Prior: **1925 ex.s. c 130 § 119;** RRS § 11280; prior: **1917 c 142 § 4; 1899 c 141 § 17; 1897 c 71 § 102; 1895 c 176 § 25; 1893 c 124 § 121.**]

84.64.080
Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording.

(1) The court must examine each application for judgment foreclosing a tax lien, and if a defense (specifying in writing the particular cause of objection) is offered by any person interested in any of the lands or lots to the entry of judgment, the court must hear and determine the matter in a summary manner, without other pleadings, and pronounce judgment. However, the court may, in its discretion, continue a case in which a defense is offered, to secure substantial justice to the contestants.

(2) In all judicial proceedings for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action in the court must be allowed. No assessments of property or charge for any of the taxes is illegal on account of any irregularity in the tax list or assessment rolls, or on account of the assessment rolls or tax list not having been made, completed, or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, vitiates or in any manner affects the tax or the assessment of the tax. Any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of the taxes, or any omission or defective act of any officer connected with the assessment or levying of the taxes, may be, in the discretion of the court, corrected, supplied, and made to conform to the law by the court.

(3) The court must give judgment for the taxes, interest, and costs that appear to be due upon the several lots or tracts described in the notice of application for judgment. The judgment must be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs. The court must order and direct the clerk to make and enter an order for the sale of the real property against which judgment

is made, or vacate and set aside the certificate of delinquency, or make such other order or judgment as in law or equity may be just. The order must be signed by the judge of the superior court and delivered to the county treasurer. The order is full and sufficient authority for the treasurer to proceed to sell the property for the sum set forth in the order and to take further steps provided by law.

(4) The county treasurer must immediately after receiving the order and judgment proceed to sell the property as provided in this chapter to the highest and best bidder. The acceptable minimum bid must be the total amount of taxes, interest, and costs.

(5) All sales must be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold. The county treasurer must first give notice of the time and place where the sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which must be in the office of the treasurer.

(6) Unless a sale is conducted pursuant to RCW **84.64.225**, notice of a sale must be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of . . . . . in the state of Washington, and an order of sale duly issued by the court, entered the . . . . day of . . . . . ., ..., in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the . . . . day of . . . . . ., ..., at . . . . o'clock a.m., at . . . . . in the city of . . . . . ., and county of . . . . . ., state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this . . . . day of . . . . . ., ...

.

Treasurer of . . . . county.

(7) As an alternative to the sale procedure specified in subsections (5) and (6) of this section, the county treasurer may conduct a public auction sale by electronic media pursuant to RCW **84.64.225**.

(8) No county officer or employee may directly or indirectly be a purchaser of the property at the sale.

(9) If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

(10) If the highest amount bid for any separate unit tract or lot exceeds the minimum bid due upon the whole property included in the certificate of delinquency, the excess must be refunded, following payment of all recorded water-sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency do not affect the payment of excess funds to the record owner. In the event that no claim for the excess is received by the county treasurer within three years after the date of the sale, the treasurer must at expiration of the three year period deposit the excess in the current expense fund of the county, which extinguishes all claims by any owner to the excess funds.

(11) The county treasurer must execute to the purchaser of any piece or parcel of land a tax deed. The tax deed so made by the county treasurer, under the official seal of the

treasurer's office, must be recorded in the same manner as other conveyances of real property, and vests in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of the conveyance.

(12) Tax deeds must be substantially in the following form:

State of Washington } ss.
County of . . . .

This indenture, made this . . . . day of . . . . . ., ..., between . . . . . ., as treasurer of . . . . . county, state of Washington, party of the first part, and . . . . . ., party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the . . . . day of . . . . . ., ..., pursuant to a real property tax judgment entered in the superior court in the county of . . . . . on the . . . . day of . . . . . ., ..., in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, ... duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the . . . . . has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I . . . . . ., county treasurer of the county of . . . . . ., state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto . . . . . ., his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this . . . . day of . . . . . ., A.D. . . . .

. . . .
County Treasurer.

[**2015 c 95 § 12; 2004 c 79 § 7; 2003 c 23 § 5.** Prior: **1999 c 153 § 72; 1999 c 18 § 8; 1991 c 245 § 27; 1981 c 322 § 5; 1965 ex.s. c 23 § 4; 1963 c 8 § 1; 1961 c 15 § 84.64.080;** prior: **1951 c 220 § 1; 1939 c 206 § 47; 1937 c 118 § 1; 1925 ex.s. c 130 § 20;** RRS § 11281; prior: **1909 c 163 § 1; 1903 c 59 § 5; 1899 c 141 § 18; 1897 c 71 § 103; 1893 c 124 § 105; 1890 p 573 § 112;** Code 1881 § 2917. Formerly RCW **84.64.080**, **84.64.090**, **84.64.100**, and **84.64.110**.]

NOTES:

Intent—2015 c 95: See note following RCW **36.16.145**.

Part headings not law—1999 c 153: See note following RCW **57.04.050**.

Validation—1963 c 8: "All rights acquired or any liability or obligation incurred under the provisions of this section prior to February 18, 1963, or any process, proceeding, order, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, or any certificate of delinquency, tax deed or other instrument given or executed thereunder, or any claim or refund thereunder, or any sale or other proceeding thereunder are hereby declared valid and of full force and effect." [**1963 c 8 § 2.**]

84.64.120
Appellate review—Deposit.

Appellate review of the judgment of the superior court may be sought as in other civil cases. However, review must be sought within thirty days after the entry of the judgment and the party taking such appeal shall deposit a sum equal to all taxes, interest, and costs with the clerk of the court, conditioned that the appellant shall prosecute the appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause. No appeal shall be allowed from any judgment for the sale of land or lot for taxes unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the clerk of the court of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order that the amount deposited with the clerk of the court, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of the judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with the clerk of the court, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with the clerk of the court, and the county clerk shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in the proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, interest, and costs, or any part thereof, in the proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his or her legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made.

[**1999 c 18 § 9; 1991 c 245 § 28; 1988 c 202 § 70; 1971 c 81 § 154; 1961 c 15 § 84.64.120.** Prior: **1925 ex.s. c 130 § 121;** RRS § 11282; prior: **1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106.**]

NOTES:

es of court: *Cf. RAP 5.2, 8.1, 18.22.*

Severability—1988 c 202: See note following RCW **2.24.050**.

84.64.130
Certified copies of records as evidence.

The books and records belonging to the office of county treasurer, certified by said treasurer, shall be deemed prima facie evidence to prove the issuance of any certificate, the sale of any land or lot for taxes, the redemption of the same or payment of taxes thereon. The county treasurer shall, at the expiration of his or her term of office, pay over to his or her successor in office all moneys in his or her hands received for redemption from sale for taxes on real property.

[**2013 c 23 § 376; 1961 c 15 § 84.64.130.** Prior: **1925 ex.s. c 130 § 123;** RRS § 11284; prior: **1897 c 71 § 108; 1893 c 124 § 123.**]

84.64.180
Deeds as evidence—Estoppel by judgment.

Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his or her heirs and assigns, to the real property thereby conveyed of the following facts: First, that the real property conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real property was sold for taxes, interest, and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real property sold for delinquent taxes rendered after January 9, 1926, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax has been paid, or the real property was not liable to the tax.

[**2013 c 23 § 377; 1961 c 15 § 84.64.180.** Prior: **1925 ex.s. c 130 § 127;** RRS § 11288; prior: **1897 c 71 § 114; 1893 c 124 § 132; 1890 p 574 § 114.**]

84.64.190
Certified copy of deed as evidence.

Whenever it shall be necessary in any action in any court of law or equity, wherein the title to any real property is in controversy, to prove the conveyance to any county of such real property in pursuance of a foreclosure of a tax certificate and sale thereunder, a copy of the tax deed issued to the county containing a description of such real property, exclusive of the description of all other real property therein described, certified by the county auditor of the county wherein the real property is situated, to be such, shall be admitted in evidence by the court, and shall be proof of the conveyance of the real property in controversy to such county, to the same extent as would a certified copy of the entire record of such tax deed.

[**1961 c 15 § 84.64.190.** Prior: **1925 ex.s. c 130 § 128;** RRS § 11289; prior: **1890 p 575 § 115.**]

84.64.200
County as bidder at sale—Purchaser to pay all delinquent taxes, interest, or costs.

(1) At all sales of property for which certificates of delinquency are held by the county, if no other bids are received, the county must be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest, and costs due thereon, and where no bidder appears, acquire title in trust for the taxing districts as absolutely as if purchased by an individual under the provisions of this chapter.

(2) All bidders except the county at sales of property for which certificates of delinquency are held by the county must pay the full amount of taxes, interest, and costs for which judgment is rendered, together with all taxes, interest, and costs which are delinquent at the time of sale, regardless of whether the taxes, interest, or costs are included in the judgment.

[**2015 c 95 § 13; 2007 c 295 § 7; 1981 c 322 § 6; 1961 c 15 § 84.64.200.** Prior: **1925 ex.s. c 130 § 129;** RRS § 11290; prior: **1901 c 178 § 4; 1899 c 141 § 24; 1897 c 71 § 116; 1893 c 124 § 136.**]

NOTES:

Intent—2015 c 95: See note following RCW **36.16.145**.

84.64.215
Deed recording fee—Transmittal to county auditor and purchaser.

In addition to a five dollar fee for preparing the deed, the treasurer shall collect the proper recording fee. This recording fee together with the deed shall then be transmitted by the treasurer to the county auditor who will record the same and mail the deed to the purchaser.

[**1991 c 245 § 29; 1961 c 15 § 84.64.215.** Prior: **1947 c 60 § 1;** Rem. Supp. 1947 § 11295a. Formerly RCW **84.64.210**, part.]

84.64.225
Public auction sale by electronic media.

(1) In lieu of the sale procedure specified in RCW **84.56.070** or **84.64.080**, the county treasurer may conduct a public auction sale by electronic media as provided in RCW **36.16.145**.

(2) Notice of a public auction sale by electronic media must be substantially in the following form:

TAX JUDGMENT SALE BY ELECTRONIC MEDIA

Public notice is hereby given that pursuant to a tax judgment of the superior court of the county of . . . . . in the state of Washington, and an order of sale duly issued by the court, entered the . . . . day of . . . . . ., ..., in proceedings for foreclosure of tax liens, I shall on the . . . . day of . . . . . ., ..., commencing at . . . . o'clock . . ., at . . [specify web site address] . . . . ., sell the property to the highest and best bidder to satisfy the full amount of taxes, interest, and costs adjudged to be due. Prospective bidders must deposit . . . . to participate in bidding. A deposit paid by a winning bidder will be applied to the balance due. However, a winning bidder who does not comply with the terms of sale will forfeit the deposit. Deposits paid by nonwinning bidders will be refunded within ten business days of the close of the sale. Payment of deposits and a winning bid must be made by electronic funds transfer.

In witness whereof, I have affixed my hand and seal this . . . . day of . . . . . ., ...

Treasurer of . . . . . county.

[**2015 c 95 § 11.**]

NOTES:

Intent—2015 c 95: See note following RCW **36.16.145**.

Chapter 84.68 RCW

RECOVERY OF TAXES PAID OR PROPERTY SOLD FOR TAXES

Chapter Listing | RCW Dispositions

Sections

84.68.010
Injunctions prohibited—Exceptions.

Injunctions and restraining orders shall not be issued or granted to restrain the collection of any tax or any part thereof, or the sale of any property for the nonpayment of any tax or part thereof, except in the following cases:

(1) Where the law under which the tax is imposed is void;

(2) Where the property upon which the tax is imposed is exempt from taxation; or

(3) Where the sale is a result of an error made by an officer or employee of the county, and the board of county commissioners or other legislative authority of the county issues an order.

[**2000 c 103 § 30; 1972 ex.s. c 84 § 3; 1961 c 15 § 84.68.010.** Prior: **1931 c 62 § 1;** RRS § 11315-1.]

84.68.020
Payment under protest—Claim not required.

In all cases of the levy of taxes for public revenue which are deemed unlawful or excessive by the person, firm or corporation whose property is taxed, or from whom such tax is

demanded or enforced, such person, firm or corporation may pay such tax or any part thereof deemed unlawful, under written protest setting forth all of the grounds upon which such tax is claimed to be unlawful or excessive; and thereupon the person, firm or corporation so paying, or their legal representatives or assigns, may bring an action in the superior court or in any federal court of competent jurisdiction against the state, county or municipality by whose officers the same was collected, to recover such tax, or any portion thereof, so paid under protest: PROVIDED, That RCW **84.68.010** through **84.68.070** shall not be deemed to enlarge the grounds upon which taxes may now be recovered: AND PROVIDED FURTHER, That no claim need be presented to the state or county or municipality, or any of their respective officers, for the return of such protested tax as a condition precedent to the institution of such action.

[**1994 c 124 § 40; 1961 c 15 § 84.68.020.** Prior: **1937 c 11 § 1; 1931 c 62 § 2; 1927 c 280 § 7; 1925 c 18 § 7;** RRS § 11315-2.]

84.68.030
Judgment—Payment—County tax refund fund.

In case it be determined in such action that said tax, or any portion thereof, so paid under protest, was unlawfully collected, judgment for recovery thereof and interest thereon at the rate specified in RCW **84.69.100** from date of payment, together with costs of suit, shall be entered in favor of plaintiff. In case the action is against a county and the judgment shall become final, the amount of such judgment, including interest at the rate specified in RCW **84.69.100** and costs where allowed, shall be paid out of the treasury of such county by the county treasurer upon warrants drawn by the county auditor against a fund in said treasury hereby created to be known and designated as the county tax refund fund. Such warrants shall be so issued upon the filing with the county auditor and the county treasurer of duly authenticated copies of such judgment, and shall be paid by the county treasurer out of any moneys on hand in said fund. If no funds are available in such county tax refund fund for the payment of such warrants, then such warrants shall bear interest in such cases and shall be callable under such conditions as are provided by law for county warrants, and such interest, if any, shall also be paid out of said fund.

[**1989 c 378 § 28; 1961 c 15 § 84.68.030.** Prior: **1931 c 62 § 3;** RRS § 11315-3.]

84.68.040
Levy for tax refund fund.

Annually, at the time required by law for the levying of taxes for county purposes, the proper county officers required by law to make and enter such tax levies shall make and enter a tax levy or levies for said county tax refund fund, which said levy or levies shall be given precedence over all other tax levies for county and/or taxing district purposes, as follows:

(1) A levy upon all of the taxable property within the county for the amount of all taxes collected by the county for county and/or state purposes held illegal and recoverable by such judgments rendered against the county within the preceding twelve months, including legal interest and a proper share of the costs, where allowed, together with the additional amounts hereinafter provided for;

(2) A levy upon all of the taxable property of each taxing district within the county for the amount of all taxes collected by the county for the purposes of such taxing district, and which have been held illegal and recoverable by such judgments rendered against the county within the preceding twelve months, including legal interest and a proper share of the costs, where allowed.

The aforesaid levy or levies shall also include a proper share of the interest paid out of the county tax refund fund during said twelve months upon warrants issued against said fund in payment of such judgments, legal interests and costs, plus such an additional amount as such levying officers shall deem necessary to meet the obligations of said fund, taking into consideration the probable portions of such taxes that will not be collected or collectible during the year in which they are due and payable, and also any unobligated cash on hand in said fund.

[**1961 c 15 § 84.68.040.** Prior: **1937 c 11 § 2; 1931 c 62 § 4;** RRS § 11315-4.]

84.68.050
Venue of action—Intercounty property.

The action for the recovery of taxes so paid under protest shall be brought in the superior court of the county wherein the tax was collected or in any federal court of competent jurisdiction: PROVIDED, That where the property against which the tax is levied consists of the operating property of a railroad company, telegraph company or other public service company whose operating property is located in more than one county and is assessed as a unit by any state board or state officer or officers, the complaining taxpayer may institute such action in the superior court of any one of the counties in which such tax is payable, or in any federal court of competent jurisdiction, and may join as parties defendant in said action all of the counties to which the tax or taxes levied upon such operating property were paid or are payable, and may recover in one action from each of the county defendants the amount of the tax, or any portion thereof, so paid under protest, and adjudged to have been unlawfully collected, together with interest thereon at the rate specified in RCW **84.69.100** from date of payment, and costs of suit.

[**1989 c 378 § 29; 1961 c 15 § 84.68.050.** Prior: **1937 c 11 § 3; 1931 c 62 § 5;** RRS § 11315-5.]

84.68.060
Limitation of actions.

No action instituted pursuant to this chapter or otherwise to recover any tax levied or assessed shall be commenced after the 30th day of the next succeeding June following the year in which said tax became payable.

[**1961 c 15 § 84.68.060.** Prior: **1939 c 206 § 48; 1931 c 62 § 6;** RRS § 11315-6.]

NOTES:

*itation of action to cancel tax deed: RCW **4.16.090**.*

84.68.070
Remedy exclusive—Exception.

Except as permitted by RCW **84.68.010** through **84.68.070** and chapter **84.69** RCW, no action shall ever be brought or defense interposed attacking the validity of any tax, or any portion of any tax: PROVIDED, HOWEVER, That this section shall not be construed as depriving the defendants in any tax foreclosure proceeding of any valid defense allowed by law to the tax sought to be foreclosed therein except defenses based upon alleged excessive valuations, levies or taxes.

[**1989 c 378 § 30; 1961 c 15 § 84.68.070.** Prior: **1939 c 206 § 49; 1931 c 62 § 7;** RRS § 11315-7.]

84.68.080
Action to recover property sold for taxes—Tender is condition precedent.

Hereafter no action or proceeding shall be commenced or instituted in any court of this state for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be recovered.

[**1961 c 15 § 84.68.080.** Prior: 1888 c 22 (p 43) § 1; RRS § 955.]

NOTES:

*itation of action to cancel tax deed: RCW **4.16.090**.*

84.68.090
Action to recover property sold for taxes—Complaint.

In all actions for the recovery of lands or other property sold for taxes, the complainant must state and set forth specially in the complaint the tax that is justly due, with penalties, interest and costs, that the taxes for that and previous years have been paid; and when the action is against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, the purchaser's assignees or grantees have been fully paid or tendered, and payment refused.

[**1994 c 124 § 41; 1961 c 15 § 84.68.090.** Prior: 1888 c 22 (p 44) § 2; RRS § 956.]

84.68.100
Action to recover property sold for taxes—Restrictions construed as additional.

The provisions of RCW **84.68.080** and **84.68.090** shall be construed as imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes.

[**1961 c 15 § 84.68.100.** Prior: 1888 c 22 (p 44) § 3; RRS § 957.]

84.68.110
Small claims recoveries—Recovery of erroneous taxes without court action.

Whenever a taxpayer believes or has reason to believe that, through error in description, double assessments, or manifest errors in assessment which do not involve a revaluation of the property, he or she has been erroneously assessed or that a tax has been incorrectly extended against him or her upon the tax rolls, and the tax based upon such erroneous assessment or incorrect extension has been paid, such taxpayer may initiate a proceeding for the cancellation or reduction of the assessment of his or her property and the tax based thereon or for correction of the error in extending the tax on the tax rolls, and for the refund of the claimed erroneous tax or excessive portion thereof, by filing a petition therefor with the county assessor of the county in which the property is or was located or taxed, which petition shall legally describe the property, show the assessed valuation and tax placed against the property for the year or years in question and the taxpayer's reasons for believing that there was an error in the assessment within the meaning of RCW **84.68.110** through **84.68.150**, or in extending the tax upon the tax rolls and set forth the sum to which the taxpayer desires to have the assessment reduced or the extended tax corrected.

[**2013 c 23 § 378; 1961 c 15 § 84.68.110.** Prior: **1939 c 16 § 1;** RRS § 11241-1.]

84.68.120
Small claims recoveries—Petition—Procedure of county officers—Transmittal of findings to department of revenue.

Upon the filing of the petition with the county assessor that officer shall proceed forthwith to conduct such investigation as may be necessary to ascertain and determine whether or not the assessment in question was erroneous or whether or not the tax was incorrectly extended upon the tax rolls and if he or she finds there is probable cause to believe that the property was erroneously assessed, and that such erroneous assessment was due to an error in description, double assessment, or manifest error in assessment which does not involve a revaluation of the property, or that the tax was incorrectly extended upon the tax rolls, he or she shall endorse his or her findings upon the petition, and thereupon within ten days after the filing of the petition by the taxpayer forward the same to the county treasurer. If the assessor's findings be in favor of cancellation or reduction or correction he or she shall include therein a statement of the amount to which he or she recommends that the assessment and tax be reduced. It shall be the duty of the county treasurer, upon whom a petition with endorsed findings is served, as in RCW **84.68.110** through **84.68.150** provided, to endorse thereon a statement whether or not the tax against which complaint is made has in fact been paid and, if paid, the amount thereof, whereupon the county treasurer shall immediately transmit the petition to the prosecuting attorney and the prosecuting attorney shall make such investigation as he or she deems necessary and, within ten days after receipt of the petition and findings by him or her, transmit the same to the state department of revenue with his or her recommendation in respect to the granting or denial of the petition.

[**2013 c 23 § 379; 1975 1st ex.s. c 278 § 208; 1961 c 15 § 84.68.120.** Prior: **1939 c 16 § 2;** RRS § 11241-2.]

NOTES:

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW **11.08.160**.

84.68.130
Small claims recoveries—Procedure of department of revenue.

Upon receipt of the petition, findings and recommendations the state department of revenue shall proceed to consider the same, and it may require evidence to be submitted and make such investigation as it deems necessary and for such purpose the department of revenue shall be empowered to subpoena witnesses in order that all material and relevant facts may be ascertained. Upon the conclusion of its consideration of the petition and within thirty days after receipt thereof, the department of revenue shall enter an order either granting or denying the petition and if the petition be granted the department of revenue may order the assessment canceled or reduced or the extended tax corrected upon the tax rolls in any

amount it deems proper but in no event to exceed the amount of reduction or correction recommended by the county assessor.

[**1975 1st ex.s. c 278 § 209; 1961 c 15 § 84.68.130.** Prior: **1939 c 16 § 3;** RRS § 11241-3.]

NOTES:

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW **11.08.160**.

84.68.140
Small claims recoveries—Payment of refunds—Procedure.

Certified copies of the order of the department of revenue shall be forwarded to the county assessor, the county auditor and the taxpayer, and the taxpayer shall immediately be entitled to a refund of the difference, if any, between the tax already paid and the canceled or reduced or corrected tax based upon the order of the department with interest on such amount from the date of payment of the original tax. Upon receipt of the order of the department the county auditor shall draw a warrant against the county tax refund fund in the amount of any tax reduction so ordered, plus interest at the rate specified in RCW **84.69.100** to the date such warrant is issued, and such warrant shall be paid by the county treasurer out of any moneys on hand in said fund. If no funds are available in the county tax refund fund for the payment of such warrant the warrant shall bear interest and shall be callable under such conditions as are provided by law for county warrants and such interest, if any, shall also be paid out of said fund. The order of the department shall for all purposes be considered as a judgment against the county tax refund fund and the obligation thereof shall be discharged in the same manner as provided by law for the discharge of judgments against the county for excessive taxes under the provisions of RCW **84.68.010** through **84.68.070** or any act amendatory thereof.

[**1989 c 378 § 31; 1975 1st ex.s. c 278 § 210; 1961 c 15 § 84.68.140.** Prior: **1939 c 16 § 4;** RRS § 11241-4.]

NOTES:

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW **11.08.160**.

84.68.150
Small claims recoveries—Limitation as to time and amount of refund.

No petition for cancellation or reduction of assessment or correction of tax rolls and the refund of taxes based thereon under RCW **84.68.110** through **84.68.150** may be considered unless filed within three years after the year in which the tax became payable or purported to become payable, unless the reduction or correction is the result of a manifest error and the

county legislative authority authorizes a longer period for a refund of the claim. The maximum refund under the authority of RCW **84.68.110** through **84.68.150** for each year involved in the taxpayer's petition is two hundred dollars. Should the amount of excess tax for any such year be in excess of two hundred dollars, a refund of two hundred dollars must be allowed under RCW **84.68.110** through **84.68.150**, without prejudice to the right of the taxpayer to proceed as may be otherwise provided by law to recover the balance of the excess tax paid by him or her.

[**2015 c 174 § 3; 2013 c 23 § 380; 1961 c 15 § 84.68.150.** Prior: **1949 c 158 § 1; 1941 c 154 § 1; 1939 c 16 § 5;** Rem. Supp. 1949 § 11241-5.]

West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Civil Rules (CR)
6. Trials (Rules 38-53.4)

Superior Court Civil Rules, CR 52

RULE 52. DECISIONS, FINDINGS AND CONCLUSIONS

Currentness

(a) Requirements.

(1) *Generally.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law.

(2) *Specifically Required.* Without in any way limiting the requirements of subsection (1), findings and conclusions are required:

(A) Temporary Injunctions. In granting or refusing temporary injunctions.

(B) Domestic Relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not. In all cases in which the court makes specific findings of physical or sexual abuse or exploitation of a child the court shall direct the court clerk to notify the state patrol of the findings pursuant to RCW 43.43.840.

(C) Other. In connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court.

(3) *Proposed.* Requests for proposed findings of fact are not necessary for review.

(4) *Form.* If a written opinion or memorandum of decision is filed, it will be sufficient if formal findings of fact and conclusions of law are included.

(5) *When Unnecessary.* Findings of fact and conclusions of law are not necessary:

(A) Stipulation. Where all parties stipulate in writing that there will be no appeal.

(B) Decision on Motions. On decisions of motions under rules 12 or 56 or any other motion, except as provided in rules 41(b)(3) and 55(b)(2).

(C) Temporary Restraining Orders. On the issuance of temporary restraining orders issued ex parte.

(b) Amendment of Findings. Upon motion of a party filed not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Presentation. Unless an emergency is shown to exist, or a party has failed to appear at a hearing or trial, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions. Persons who have failed to appear at a hearing or trial after notice, may, in the discretion of the trial court, be deemed to have waived their right to notice of presentation or previous review of the proposed findings and conclusions.

(d) Judgment Without Findings, etc. A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal. After vacation, the judgment shall not be reentered until findings are entered pursuant to this rule.

(e) Time Limit for Decision. [Reserved. See RCW 2.08.240.]

Credits
[Amended effective September 1, 1985; January 1, 1988; September 1, 2005.]

CR 52, WA R SUPER CT CIV CR 52
Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/15/17. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/15/17.

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West's Revised Code of Washington Annotated
Part IV Rules for Superior Court
Superior Court Civil Rules (CR)
7. Judgment (Rules 54-63)

Superior Court Civil Rules, CR 60

RULE 60. RELIEF FROM JUDGMENT OR ORDER

Currentness

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) *Motion.* Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) *Notice.* Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) *Service.* The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) *Statutes.* Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

Credits

[Amended effective September 26, 1972; January 1, 1977; April 28, 2015.]

CR 60, WA R SUPER CT CIV CR 60

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/15/17. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/15/17.

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CERTIFICATE OF SERVICE

I, Doris D. Needles, declare under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

John R. Scannell 543 6th Street Bremerton, WA 98337	[X] Via U.S. Mail, Postage Prepaid [ ] Via Email [ ] Via Hand Delivery
John R. Scannell Action Law Net 543 6th Street Bremerton, WA 98337	[X] Via U.S. Mail, Postage Prepaid [ ] Via Email [ ] Via Hand Delivery
Paul King P.O. Box 3444 Seattle, WA 98114	[X] Via U.S. Mail, Postage Prepaid [ ] Via Email [ ] Via Hand Delivery
Kerry J. Keefe Assistant United States Attorney Office of the United States Attorney 700 Stewart Street, Suite 5220 Seattle, WA 98101-1271	[X] Via U.S. Mail, Postage Prepaid [ ] Via Email [ ] Via Hand Delivery
Sara Humphries G.S. Jones Law Group, P.S. 1155 Bethel Avenue Port Orchard, WA 98366	[X] Via U.S. Mail, Postage Prepaid [ ] Via Email [ ] Via Hand Delivery

K.C. Hawthorne Receivables Management, Inc. 6565 Kimball Dr., Suite 200 P.O. Box 2449 Gig Harbor, WA 98335-4449	[X] [ ] [ ]	Via U.S. Mail, Postage Prepaid Via Email Via Hand Delivery
Kathleen Kim Coghlan Lisa M. Johnson Schweet Linde & Coulson, PLLC 575 S. Michigan Street Seattle, WA 98108	[X] [ ] [ ]	Via U.S. Mail, Postage Prepaid Via Email Via Hand Delivery
John G. Ritchie, as Successor in Interest to Wampold Group 10764 Sand Point Way N.E. Seattle, WA 98125	[X] [ ] [ ]	Via U.S. Mail, Postage Prepaid Via Email Via Hand Delivery

EXECUTED this 17th day of August, 2017, in Port Orchard, Washington.

Doris D. Needles

DORIS D. NEEDLES, Legal Assistant
Kitsap County Prosecuting Attorney
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KITSAP COUNTY PROSECUTING ATTORNEY'S OFFICE - CIVIL DIVISION

August 17, 2017 - 1:13 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	48649-1
Appellate Court Case Title:	In Re Proceeding for Kitsap Co Foreclosure Leins 2011
Superior Court Case Number:	14-2-00875-1

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Sender Name: Doris Needles - Email: dneedles@co.kitsap.wa.us
Filing on Behalf of: Alan L Miles - Email: AMiles@co.kitsap.wa.us (Alternate Email:)

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